

## EXHIBIT A

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Walter W. Thiemann,  
on behalf of himself and of  
all others similarly situated,

Plaintiff,

**VS.**

OHSL Financial Corporation, et al.

**Defendants.**

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Case No. C-1-00-793

**Judge Sandra S. Beckwith**

Magistrate Judge Hogan

**RULE 56 (f)**  
**AFFIDAVIT OF**  
**MICHAEL G.**  
**BRAUTIGAM**

STATE OF OHIO

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: SS:

COUNTY OF HAMILTON

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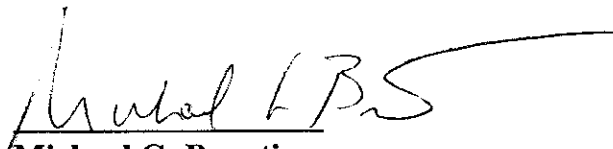
**MICHAEL G. BRAUTIGAM, being duly sworn, deposes and states as follows:**

1. I am one of the counsel for the plaintiffs in this action.
2. I make this affidavit pursuant to Rule 56 (f) to inform the Court that I believe that plaintiffs are unable to fully and fairly respond to the motions to dismiss filed by the KMK defendants, the Dinsmore defendants, and the OHSL and Provident defendants based on the current incomplete state of the record.
3. I have conferred with Gene Mesh, another of the counsel for the plaintiffs, and I am informed and believe that Mr. Mesh also believes

that plaintiffs are unable to fully and fairly respond to the motions to dismiss due to the current state of the record.

4. Both Gene Mesh and I believe that the motions to dismiss filed by the KMK defendants, the Dinsmore defendants, and the OHSL and Provident defendants, are really motions for summary judgment masquerading as motions to dismiss that would require the Court to make detailed factual findings inappropriate on a 12(b) (6) motion.

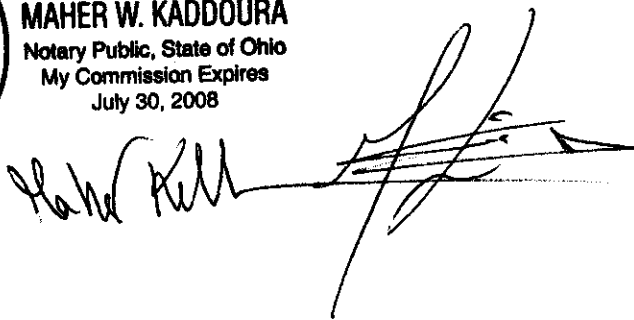
**FURTHER AFFIANT SAYETH NAUGHT**

  
**Michael G. Brautigam**

Sworn to before me and subscribed in my presence this 13<sup>th</sup> day of February 2004.



**MAHER W. KADDOURA**  
Notary Public, State of Ohio  
My Commission Expires  
July 30, 2008



## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT CINCINNATI

WALTER W. THIEMANN, on :  
behalf of himself and :  
of all others similarly :  
situated. :

Plaintiff, :

VS. : CASE NO. C-1-00793

OHSL FINANCIAL CORP., :  
OAK HILLS SAVINGS AND :  
LOAN COMPANY, F.A., :  
NORBERT G. BRINKER, :  
KENNETH L. HANAUER, :  
WILLIAM R. HILLEBRAND, :  
ALVIN E. HUCKE, THOMAS :  
E. MCKIERNAN, JOSEPH J. :  
TENOEVEY, HOWARD N. :  
ZOELLNER, PROVIDENT :  
FINANCIAL GROUP, INC., :  
ROBERT L. HOVERSON, :  
JACK M. COOK, THOMAS D. :  
GROTE, JR., PHILIP R. :  
MYERS, JOSEPH A. PEDOTO, :  
JOSEPH A. STEGER, :  
CHRISTOPHER J. CAREY, :  
CLIFFORD ROE, and :  
DINSMORE & SHOHL, LLP. :

Defendants. :

Transcript of hearing held before

Magistrate Judge Hogan, pursuant to the  
Federal Rules of Civil Procedure, taken  
before me, Lee Ann Williams, a Registered  
Professional Reporter and Notary Public in  
and for the State of Ohio, on Thursday, January  
5, 2004, at 1:00 p.m.

APPEARANCES:

On behalf of the Plaintiff:  
Michael G. Brautigam, Esq.  
Gene Mesh & Associates  
2605 Burnet Avenue  
Cincinnati, Ohio 45219

On behalf of the Defendants:

James E. Burke, Esq.  
Rachael A. Rowe, Esq.  
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Cincinnati, Ohio 45202

On behalf of the Defendants Dinsmore &  
Shohl and Clifford Roe:

John W. Must, Esq.  
Schroeder, Maundrell, Barbieri  
& Powers  
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11935 Mason Road  
Cincinnati, Ohio 45249

On behalf of the Defendants:

Michael Barrett, Esq.  
and  
Thomas W. Bredenstein, Esq.  
Barrett & Weber  
105 East Fourth Street  
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Cincinnati, Ohio 45202

On behalf of the Defendants:

John B. Pinney, Esq.  
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1900 Fifth Third Center  
511 Walnut Street  
Cincinnati, Ohio 45202

On Behalf of the Defendants:

Mary-Helen Perry, Esq.  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001

THE COURT: Everybody's here in

chambers and we've agreed to have a brief  
status conference on whatever Mr. Brautigam  
wants to discuss. I don't know. Go ahead.

MR. BRAUTIGAM: Your Honor, first  
of all, thank you very much for taking time  
with the deposition this morning and thank you  
for meeting with us briefly with respect to the  
status conference.

Your Honor, we asked for a status  
conference because the schedule that you set,  
document 221, is no longer workable. It's  
fundamentally unfair and it's unfair in part  
because the defendants have chosen to  
re-litigate things that have already --

THE COURT: Can I stop you a  
second, Mike? My understanding was that the  
calendar order was the subject of objections  
before Judge Beckwith. And if that's the case,  
that issue is before Judge Beckwith and why  
would I want to address it now? I mean, that's  
my -- that's my understanding.

And I'm not sure that there is any  
legal authority for filing objections to a

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12:58:34 1 calendar order, but technically speaking -- I  
12:58:36 2 mean, beyond technically speaking, I think it's  
12:58:40 3 up to her how to schedule her case. And I'm  
12:58:46 4 certain she's going to react to that in some  
12:58:48 5 way.

12:58:48 6 Now, maybe if she were to dismiss  
12:58:50 7 it on technical grounds, then it might be a  
12:58:56 8 subject to be discussed here. But my feeling  
12:58:58 9 for the moment is it's Judge Beckwith's call  
12:59:00 10 what she wants to do with the calendar order.  
12:59:04 11 I mean, I don't know how you all feel about it.  
12:59:08 12 I --

12:59:10 13 MR. BURKE: Your Honor --

12:59:10 14 THE COURT: Am I right?

12:59:12 15 MR. BURKE: Yes. There were  
12:59:12 16 objections filed, Your Honor.

12:59:14 17 MR. BRAUTIGAM: Your Honor, the  
12:59:14 18 problem is this, we have not been able to get  
12:59:18 19 before Judge Beckwith for the pendency of the  
12:59:20 20 entire case. I believe we've filed emergency  
12:59:22 21 motions before, and somehow these things have a  
12:59:24 22 way of mooting these things out.

12:59:26 23 As it stands now, we are required  
12:59:28 24 to respond by February 16th, which is a

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13:00:22 1 The problem with Mr. Brautigam is  
13:00:22 2 when we asked for a similar courtesy earlier in  
13:00:26 3 the case with respect to class certification  
13:00:28 4 about a month ago, he said no. I guess he  
13:00:30 5 feels he can't ask us for something or we would  
13:00:34 6 respond as he has responded. That's not the  
13:00:38 7 way we practice law in the Ohio Bar, that's the  
13:00:40 8 way he practices law. If he had asked us, we  
13:00:42 9 would have agreed, it's that simple.

13:00:44 10 MR. BRAUTIGAM: Your Honor, that's  
13:00:44 11 disingenuous. Judge Beckwith had issued a  
13:00:48 12 ruling saying the schedule will not be changed.  
13:00:50 13 So I think it was wrong for Mr. Burke to call  
13:00:52 14 me up and say, we'd like some additional time.  
13:00:56 15 And I think it would be wrong for me to ask for  
13:00:58 16 additional time sort of behind the Court's  
13:01:00 17 back.

13:01:00 18 MR. BURKE: He could file a motion  
13:01:02 19 and we would not oppose it.

13:01:04 20 THE COURT: I'm not clear on what  
13:01:08 21 you want.

13:01:08 22 MR. BRAUTIGAM: Your Honor, we  
13:01:06 23 would like to meet before Judge Beckwith and  
13:01:10 24 explain what has happened. We don't believe we

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12:59:30 1 holiday, which is less than the usual time, to  
12:59:34 2 something that the defendants collectively had  
12:59:38 3 months to do.

12:59:38 4 We object to that, we think it's  
12:59:40 5 fundamentally unfair. Except with respect to  
12:59:42 6 Ernst & Young, who truly did file a motion to  
12:59:46 7 dismiss, what the defendants have filed are  
12:59:48 8 motions for summary judgment. They have reams  
12:59:50 9 of attachments, and that's one thing. But even  
12:59:52 10 worse, they attempt to re-argue decisions of  
12:59:54 11 this Court.

12:59:54 12 And we think it's simply  
12:59:56 13 outrageous and we don't feel that we have to  
12:59:58 14 respond to something like that. And we need  
13:00:00 15 some guidance on this right away.

13:00:02 16 MR. BURKE: Your Honor, if I can  
13:00:04 17 respond. Mr. Brautigam is free to bring all of  
13:00:06 18 those issues up in his response and to argue  
13:00:08 19 whatever he wants. I would further add, Your  
13:00:10 20 Honor, that if Mr. Brautigam had called us and  
13:00:14 21 said, there's a lot of motions to be responded  
13:00:16 22 to, I would like a couple of weeks, the answer  
13:00:18 23 would have been we will not oppose a motion to  
13:00:20 24 give you additional time, quite honestly.

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13:01:14 1 should re-argue things that have already been  
13:01:14 2 decided. In fact, they have wrongly accused us  
13:01:18 3 of doing that throughout the case and that's  
13:01:18 4 not true.

13:01:20 5 What they did was, of the three  
13:01:20 6 allegations that were made previously, the  
13:01:22 7 Herron resignation, unanimity of the Board, and  
13:01:26 8 with respect to securitizations, they argued  
13:01:28 9 the same thing. They quote the same language  
13:01:30 10 and we think it's outrageous. It's not what  
13:01:32 11 the Court wanted.

13:01:34 12 THE COURT: You're still losing  
13:01:34 13 me. The defense has filed motions for summary  
13:01:36 14 judgment?

13:01:38 15 MS. ROWE: No.

13:01:40 16 MR. BURKE: No.

13:01:42 17 THE COURT: Motions to dismiss,  
13:01:42 18 and you want time to respond to the motions to  
13:01:44 19 dismiss?

13:01:46 20 MR. BRAUTIGAM: Correct.

13:01:48 21 MR. BURKE: We don't oppose that,  
13:01:48 22 Your Honor.

13:01:50 23 MR. BRAUTIGAM: We want guidance  
13:01:50 24 on how to respond to these things. If these

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13:01:52 1 things -- if we're correct and these things are  
13:01:54 2 really motions for summary judgment  
13:01:56 3 masquerading as 12(B)(6) motions, let's all say  
13:02:00 4 that. Let's set an additional time, a normal  
13:02:02 5 time period to take discovery and respond.  
13:02:04 6 That's what we want, but it's not a matter of a  
13:02:06 7 week or two.

13:02:08 8 MR. HUST: Your Honor, may I be  
13:02:10 9 heard? If I understand the procedure for the  
13:02:12 10 12(B)(6), if Mr. Brautigam feels that we have  
13:02:14 11 cited materials beyond the scope of a 12(B)(6)  
13:02:16 12 motion, he certainly could point that out in a  
13:02:18 13 memorandum in opposition.

13:02:20 14 If Judge Beckwith somehow  
13:02:22 15 concluded that this was, in fact, a disguised  
13:02:24 16 motion for summary judgment, the Court would  
13:02:26 17 have to so advise the parties in advance that  
13:02:28 18 the Court was going to treat it as a summary  
13:02:30 19 motion and then go from there in terms of any  
13:02:32 20 modifications of the briefing or discovery or  
13:02:34 21 whatever.

13:02:36 22 So I mean, to the -- and the last  
13:02:38 23 point about the three remaining allegations, as  
13:02:40 24 I have pointed out in our motion to dismiss, we

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13:03:50 1 these really motions to dismiss, should we  
13:03:52 2 respond in significantly less than the normal  
13:03:54 3 amount of time for motions.

13:03:56 4 THE COURT: I think the answer to  
13:03:58 5 this is very simple. It starts with two  
13:04:00 6 premises. First, Judge Beckwith does not  
13:04:02 7 delegate dispositive motions, so whether it's a  
13:04:04 8 motion to dismiss or a motion for summary  
13:04:06 9 judgment, it's going to be decided by her  
13:04:08 10 without any reports and recommendations here.  
13:04:10 11 That's the first point.

13:04:12 12 My second point is, it will be  
13:04:14 13 obvious to her that -- I guess I've got three  
13:04:16 14 points. It will be obvious to her whether or  
13:04:18 15 not, regardless of what the defendants have  
13:04:20 16 called the motion, whether it's in effect a  
13:04:22 17 summary judgment or for dismissal.

13:04:24 18 I mean, if it raises factual  
13:04:26 19 issues that aren't established otherwise in the  
13:04:28 20 record, she's going to consider it a motion for  
13:04:30 21 summary judgment. The Rules require that if  
13:04:32 22 that's the case, she has to provide notice that  
13:04:34 23 she's treating it as a motion for summary  
13:04:36 24 judgment. And that would be the point, it

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13:02:52 1 were mindful that the Court had overruled the  
13:02:54 2 12(B)(6) as to those claims or allegations back  
13:02:56 3 at the original complaint, but the new  
13:03:02 4 complaint had made additional factual  
13:03:04 5 allegations, incorporated other documents, and  
13:03:06 6 made specific references to testimony of  
13:03:10 7 various witnesses.

13:03:12 8 So we've gone out on a limb, so to  
13:03:14 9 speak, and said, we think we're entitled to  
13:03:16 10 attack those three remaining misrepresentations  
13:03:18 11 because the new complaint contains vastly more  
13:03:20 12 allegations than the original. If I'm wrong,  
13:03:22 13 I'm sure Judge Beckwith will let me know  
13:03:24 14 that -- if I've overstepped the bounds in our  
13:03:26 15 motion.

13:03:28 16 MR. BURKE: But it's certainly  
13:03:30 17 something for Judge Beckwith to rule on on the  
13:03:32 18 merits of the motion, not in advance, Your  
13:03:34 19 Honor.

13:03:36 20 MR. BRAUTIGAM: Your Honor, I  
13:03:38 21 agree with what Mr. Hust has said largely, he  
13:03:40 22 is out on a limb, he may have overstepped the  
13:03:42 23 bounds. And what we want is for Judge Beckwith  
13:03:44 24 to look at this and give us guidance. Are

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13:04:50 1 seems to me where if you wanted time, you would  
13:04:52 2 make that request right as soon as you got  
13:04:54 3 notice.

13:04:56 4 MR. BRAUTIGAM: Your Honor, that's  
13:04:58 5 what we did. We filed an emergency motion. We  
13:05:00 6 received these papers by mail on Monday. We  
13:05:02 7 filed an emergency motion on Tuesday. The  
13:05:04 8 defendants responded today. Now, their defense  
13:05:06 9 is they've called me names. They say that we  
13:05:08 10 don't have the resources, that's not correct.  
13:05:10 11 That's their entire strategy for this entire  
13:05:12 12 case, to call us names.

13:05:14 13 But I agree with everything you've  
13:05:16 14 said, so the question is, procedurally, how do  
13:05:18 15 we get to Judge Beckwith soon to figure out  
13:05:20 16 what to do? It's unfair for us to respond to  
13:05:22 17 these things that Mr. Hust has said are way out  
13:05:24 18 on a limb, where he may have overstepped. I  
13:05:26 19 mean, we have less than the usual amount of  
13:05:28 20 time to respond to one motion. Significantly  
13:05:30 21 less, I think it's a week, so it's unfair.

13:05:32 22 It's simply unfair to ask us to do  
13:05:34 23 this when they've had months to do it. They  
13:05:36 24 all got together and they have this

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13:05:44 1 coordinating strategy because everything is  
13:05:46 2 interlocking. The Dinsmore defendants  
13:05:48 3 incorporate parts of the OHSL defendants'  
13:05:52 4 brief. The other defendants -- the KMK  
13:05:54 5 defendants incorporate part of the other  
13:05:56 6 briefs.  
13:05:58 7 They had months to do this, we  
13:05:58 8 have days to respond. And it's contemptuous of  
13:06:02 9 Judge Beckwith's ruling because they argue the  
13:06:04 10 same thing in the same way. I was shocked by  
13:06:06 11 it. I never expected this, Your Honor.  
13:06:10 12 MR. HUST: Your Honor, I --  
13:06:10 13 MR. BARRETT: Can I say that we  
13:06:12 14 should focus on point eight, because that's  
13:06:12 15 where everyone seems to not be --  
13:06:16 16 THE COURT: That's good, you read  
13:06:18 17 that.  
13:06:18 18 MR. BARRETT: We have no problem  
13:06:20 19 with a short extension. I'm sure the Judge  
13:06:22 20 would sign an agreed entry. I don't normally  
13:06:26 21 speak for her, but she probably would, I think.  
13:06:28 22 And I think the Court has already recognized  
13:06:30 23 that if, in fact, items are raised that makes  
13:06:32 24 the Court feel it's a summary judgment, she'll

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13:07:34 1 MR. BRAUTIGAM: May I finish,  
13:07:36 2 please? So I don't think that it's fair for  
13:07:38 3 Mr. Burke to call me up and say, hey, we have  
13:07:40 4 to change the schedule. And it's not fair for  
13:07:42 5 me to call him up and say, we need time to  
13:07:46 6 respond, with respect to Mr. Burke's other  
13:07:48 7 disingenuous use. It's simply unfair, Your  
13:07:52 8 Honor.  
13:07:54 9 THE COURT: This is from my eight  
13:07:54 10 years of being here and chatting formally and  
13:07:58 11 informally with my colleagues. I really think  
13:08:00 12 that the thing that triggers their interest is  
13:08:04 13 moving back the dispositive motion cut off, all  
13:08:06 14 right? Because that usually interferes with  
13:08:10 15 the pretrial and trial.  
13:08:12 16 I don't see a lot of interest in  
13:08:12 17 what we do at this level to move the schedule  
13:08:16 18 around to accommodate people, as long as it  
13:08:16 19 doesn't impact on what they're doing.  
13:08:18 20 MR. BRAUTIGAM: So I mean, let's  
13:08:22 21 go back to the first question asked. How do I  
13:08:24 22 get to Judge Beckwith?  
13:08:26 23 THE COURT: I would think that  
13:08:28 24 what you ought to do is approach her and ask

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13:06:34 1 give us the proper notice and go forward.  
13:06:38 2 But we can respond to the reply  
13:06:40 3 for the motion to dismiss well within the four  
13:06:44 4 corners of the consolidated complaint. But I  
13:06:46 5 think we're not out on a limb, I think we're on  
13:06:50 6 pretty solid footing, quite frankly.  
13:06:52 7 MR. HUST: In this case we filed  
13:06:54 8 our motion to dismiss first. I think it was  
13:06:56 9 January 21st or 22nd. And the other defendants  
13:07:00 10 filed shortly thereafter, so we're not in the  
13:07:04 11 business of incorporating other people's memos  
13:07:06 12 in the motion to dismiss. The time to respond  
13:07:08 13 to ours may be even shorter.  
13:07:12 14 MR. BRAUTIGAM: Your Honor, I just  
13:07:14 15 want to point out that no one seems to have a  
13:07:16 16 problem with an extension except the District  
13:07:18 17 Judge. And if you give me a minute, I can find  
13:07:20 18 it. You were told to set a schedule, document  
13:07:24 19 221. The Judge said the schedule should not be  
13:07:26 20 changed. So we observed the letter and the  
13:07:28 21 spirit of Judge Beckwith's order. So I don't  
13:07:30 22 think --  
13:07:32 23 MR. BURKE: Well, then file your  
13:07:32 24 response on the 16th.

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13:08:30 1 her for some guidance on the schedule, you  
13:08:34 2 know.  
13:08:36 3 MR. BRAUTIGAM: Okay. Should we  
13:08:38 4 call, Your Honor? We thought we were doing  
13:08:38 5 that with the filing of the emergency motion.  
13:08:40 6 THE COURT: Well, you know, I  
13:08:42 7 think there's a -- it's like a football term  
13:08:46 8 where you're splitting the zone, you know.  
13:08:52 9 It's not real clear sometimes what she's doing  
13:08:54 10 and what I'm doing when you get in cases like  
13:08:58 11 this. And I've tried to stay out of her way  
13:09:02 12 and I think vice versa.  
13:09:04 13 So I don't mind, you can say in  
13:09:06 14 your motion, if you want to approach it, that  
13:09:08 15 in light of the Court's orders that you just  
13:09:10 16 quoted, that I'm unsure about my authority to  
13:09:12 17 change the schedule. And I -- the lawyers  
13:09:14 18 don't seem to object. If you can work out a  
13:09:18 19 reasonable accommodation, I can't see Judge  
13:09:20 20 Beckwith getting in the way. I really can't.  
13:09:24 21 MR. BRAUTIGAM: Well, Your Honor,  
13:09:24 22 is it possible to have this emergency motion  
13:09:26 23 heard before Judge Beckwith, because we pretty  
13:09:30 24 much --

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13:09:30 1 THE COURT: That's up to her,  
13:09:32 2 Mike. I can't tell you what she'd do. I think  
13:09:34 3 what you have to explain to her is it's okay  
13:09:36 4 with me and it's not -- you know, it's not  
13:09:38 5 purely a scheduling issue in a complicated  
13:09:42 6 case.  
13:09:42 7 It's going to impact on her order  
13:09:46 8 and if -- whenever that happens to me, I just  
13:09:48 9 go up and ask them, that it apparently  
13:09:52 10 conflicts with what you've earlier said and I  
13:09:56 11 don't want to do something that would be  
13:09:58 12 contemptuous, so how do you feel about it? I  
13:10:00 13 mean, informally. But I don't see any reason  
13:10:02 14 why you can't do that and just represent to her  
13:10:06 15 that that's how I feel about it.  
13:10:08 16 MR. BRAUTIGAM: So I should call  
13:10:10 17 Judge Beckwith's chambers?  
13:10:12 18 THE COURT: I would ask her.  
13:10:12 19 MR. BRAUTIGAM: That's exactly  
13:10:12 20 what I'll do.  
13:10:14 21 THE COURT: See if you can get a  
13:10:14 22 reasonable extension of time that nobody seems  
13:10:18 23 to oppose.  
13:10:18 24 MR. BRAUTIGAM: Your Honor, it's

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13:11:04 1 Court at that juncture can say, okay, I agree  
13:11:06 2 with plaintiffs, I'll ignore those. Or the  
13:11:08 3 Court can say, all right, I'm going to treat it  
13:11:12 4 as a summary judgment, here's the notice.  
13:11:14 5 THE COURT: I don't see any reason  
13:11:14 6 not to call. That's what you're saying.  
13:11:16 7 MR. BURKE: Exactly.  
13:11:18 8 MR. HUST: If she was going to  
13:11:18 9 agree with us that they are properly referred  
13:11:20 10 to --  
13:11:20 11 MR. BURKE: For the record, Your  
13:11:22 12 Honor, we think the cases that have been cited  
13:11:24 13 in our brief are pretty clear. If Mr.  
13:11:24 14 Brautigam is going to start alleging facts and  
13:11:28 15 half quotes from a deposition or from a proxy  
13:11:30 16 statement or from a document outside the  
13:11:32 17 record, if he references it, refers to it and  
13:11:34 18 relies on it in his complaint, we have the  
13:11:36 19 right to bring to the Court's attention that  
13:11:36 20 entire document so that it be placed in  
13:11:38 21 context.  
13:11:40 22 We think the law is pretty clear  
13:11:40 23 on that. So just for the record, we'd disagree  
13:11:44 24 with Mr. Brautigam's position. But whether

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13:10:18 1 not only a reasonable extension of time, but  
13:10:20 2 it's an extension of time to do what. If I'm  
13:10:24 3 correct and these are summary judgment  
13:10:28 4 motions --  
13:10:26 5 THE COURT: Well, I don't think  
13:10:28 6 you can say that now because she's got to react  
13:10:28 7 to that. She's got to look at that motion and  
13:10:32 8 say I consider this a motion for summary  
13:10:32 9 judgment and put a notice out to the parties  
13:10:34 10 that it's going to be considered that way.  
13:10:36 11 MR. BRAUTIGAM: Right. But  
13:10:36 12 somehow she has to be alerted to look at it  
13:10:40 13 before the 16th.  
13:10:40 14 MR. BURKE: Well, put it your  
13:10:42 15 response and say that. File your response and  
13:10:44 16 say that and then she will be put on notice and  
13:10:48 17 then she can react. I don't understand what's  
13:10:50 18 so hard.  
13:10:50 19 MR. BRAUTIGAM: Well, Jim --  
13:10:52 20 MR. HUST: My experience is the  
13:10:54 21 Court would sua sponte react if it's a 12(B)(6)  
13:10:58 22 motion. And if the plaintiffs suggest that  
13:10:58 23 there are matters outside the pleadings or that  
13:11:02 24 otherwise are improperly incorporated, the

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13:11:48 1 that's correct or incorrect, I agree with Mr.  
13:11:48 2 Hust if he says that the Judge can react.  
13:11:50 3 MR. BRAUTIGAM: Your Honor,  
13:11:50 4 essentially what Mr. Burke is saying is it's a  
13:11:54 5 motion for summary judgment, and with that I  
13:11:56 6 agree.  
13:11:56 7 MR. BARRETT: No, time out.  
13:11:58 8 MR. BRAUTIGAM: Please don't  
13:11:58 9 interrupt me.  
13:12:00 10 MR. BARRETT: It's unbelievable  
13:12:02 11 the way you handle yourself.  
13:12:04 12 MR. BRAUTIGAM: I didn't interrupt  
13:12:04 13 you.  
13:12:04 14 MR. BARRETT: Yes, I know you  
13:12:06 15 didn't.  
13:12:06 16 THE COURT: Let's get back to the  
13:12:08 17 point. How do you get to Judge Beckwith and  
13:12:10 18 explain to her your quandary. You simply  
13:12:12 19 approach her chambers and say, I need to know  
13:12:14 20 for my own ability to represent my clients, do  
13:12:16 21 you consider these motions to dismiss summary  
13:12:20 22 judgments or not.  
13:12:20 23 MR. BRAUTIGAM: Okay.  
13:12:20 24 THE COURT: And if so, will you

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13:12:22 1 give me more time to do it. The Magistrate  
13:12:24 2 Judge says it's okay with him. We're not on  
13:12:28 3 each other's turf, if she considers it that  
13:12:30 4 way.  
13:12:30 5 MR. BRAUTIGAM: Your Honor, may  
13:12:32 6 plaintiffs have permission to write a letter to  
13:12:34 7 Judge Beckwith and copy you?  
13:12:38 8 MR. BURKE: I assume that includes  
13:12:38 9 counsel, too.  
13:12:38 10 THE COURT: I don't care.  
13:12:40 11 MR. BRAUTIGAM: Of course. I can  
13:12:42 12 have permission?  
13:12:42 13 THE COURT: Yes.  
13:12:44 14 MR. BRAUTIGAM: Thank you, Your  
13:12:44 15 Honor. So I will send a letter to Judge  
13:12:46 16 Beckwith and all counsel, of course, and just  
13:12:50 17 ask for some resolution thereof.  
13:12:52 18 THE COURT: And if I get marching  
13:12:54 19 orders to re-create the calendar order, fine.  
13:12:56 20 It's not a big deal.  
13:12:58 21 MR. BRAUTIGAM: I just want it  
13:12:58 22 clear on the record that I have permission to  
13:13:00 23 write Judge Beckwith.  
13:13:04 24 MR. HUST: You have my permission

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13:13:04 1 to represent that I have no objection to an  
13:13:08 2 extension.  
13:13:10 3 MR. BARRETT: Reasonable  
13:13:10 4 extension.  
13:13:10 5 MS. ROWE: Just so we're clear,  
13:13:12 6 Your Honor, is it correct to say that the  
13:13:12 7 scheduling order as it's written stays in place  
13:13:16 8 until Judge Beckwith makes some sort of  
13:13:20 9 extension?  
13:13:20 10 THE COURT: Yes. Okay?  
13:13:24 11 MR. BRAUTIGAM: Thanks, Your  
13:13:24 12 Honor.  
13:13:26 13 MS. PERRY: Thank you, Your Honor.  
13:13:28 14 THE COURT: Okay, thanks.  
15  
16 ...  
17 (Hearing concluded at 1:13 p.m.)  
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1 CERTIFICATE  
2  
3 I, Lee Ann Williams, a Notary Public in  
4 and for the State of Ohio, do hereby certify  
5 that the foregoing is a true and correct  
6 transcript of the proceedings in the foregoing  
7 captioned matter, taken by me at the time and  
8 place so stated and transcribed from my  
9 stenographic notes.  
10  
11 My commission expires: \_\_\_\_\_  
12 August 26, 2004 Lee Ann Williams, RPR  
13 Notary Public-State of Ohio  
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